

Packaging Services- Coverage**Madhukar N Hiregange FCA, DISA(ICAI)**

Packaging today is a very important activity as there are competing products and only that which catches the eye would be purchased. In some products the cost of packaging exceeds the cost of the basic product itself. Example abound in mineral water, aerated drinks, some medicines etc. Packaging other than adding to the visual appeal is also used to avoid duplications, to preserve the product from dust and atmosphere. All products today be they liquids, gases or solids come in attractive and sometimes reusable packaging. The activity of packaging products from gases (aerosols, bottles), arrack (pouches), food products(flexipacks/ tetrapacks, bottles), even mere labeling or imprinting would be a taxable activity as long as all are done on the product. All those packaging/ packing activities, which are not covered under central excise as deemed manufacture are now sought to be covered under Service Tax in this category.

Definitions

Section 65(76b) “packaging activity” means packaging of goods including pouch filling, bottling, labeling, or imprinting of the packages, but does **not include** activity that amount to **manufacture** within the meaning of section 2(f) of the Central Excise Act 1944.

Section 65(105)(zzzf) “taxable service” means any service provided or to be provided to any person in relation to packaging activity.

What is manufacture u/s 2(f)?

Manufacture has been defined under Section 2(f) as follows - “manufacture” includes any process,-

- (i) incidental or ancillary to the completion of manufactured product; and
- (ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act,1985(5 of 1986) as amounting to manufacture; or
- (iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,

and the word “manufacturer” shall be construed accordingly and shall include not only a person who employs a hired labour in the production or manufacture of excisable goods,

but also any person who engages in their production or manufacture on his own account.

Section 2(f)(i): The definition does not define manufacture clearly and only provides what is to be included. The Supreme Court in U.O.I. vs DCM 1977(1) E.L.T.J. 199 held that “manufacture” means to bring into existence a new substance and does not mean merely to produce some change in substance. In other words, the produce, arises out of the process, must be a distinct commercial commodity different from that out of which it is processed. Whether or not something results in manufacture would depend on facts of the case. However generally the packaging of the product would not change the product itself. Therefore where Central Excise does not apply, Service Tax would apply.

Section 2(f)(ii) of the Central Excise Act sets out activities based on the classification of products wherein chapter per se, heading or sub headings are liable to called manufacture. Those products where packing or labeling or containerization amounts to manufacture are as under:

1. All dairy produce under chapter 4
2. Preparations of meat/ fish crustaceans, mollusks or other aquatic invertebrates under chapter 16
3. Sugars under 17.02
4. All cocoa and cocoa preparations under chapter 18
5. All preparations of cereals, flour, starch or milk, pastry cooks products under chapter 19.
6. All preparations of vegetable, fruits, nuts or other parts of plant under chapter 20
7. All miscellaneous edible products under chapter 21.
8. Waters including natural or artificial mineral waters under Chapter 22.01
9. Aerated waters under chapter 22.02
10. All tobacco products under chapter 24.01/0203/04.
11. Petroleum oils under Chapter 27.10
12. All inorganic/ organic chemicals under Chapter 28/ 29.
13. Synthetic dyes under chapter 32.04
14. Pigments under chapter 32.06
15. Perfumes and toilet waters under chapter 33.03
16. Beauty make up under chapter 33.04
17. Preparation for use on hair under chapter 33.05
18. All soaps and surface active agents under chapter 34

19. All albuminoidal substances under chapter 35

In all these cases the coverage under central excise applies and therefore the coverage under service tax would not be required.

Section 2(f)(iii) sets out that the declaration of price, alteration of price of all products falling into third schedule would also amount to manufacture. (See RK Jain Central Excise Tariff 2008-09). Those that are set out therein being liable for Central Excise, as in case of 2(f)(ii) above would also not be liable for service tax.

Therefore the activities, which do not fall under any of the above such as packaging of products of animal origin, vegetables, fruits nuts their products, cereals and numerous other products falling into all chapter between Chapter 1 to Chapter 96 are liable for service tax. Packaging service providers to clearly examine the activity and choose between the devil and the deep sea i.e. between Central Excise and Service Tax unless they are covered by the small scale exemptions.

Service Tax Valuation

Once the liability is confirmed, the valuation of such packaging for the purpose of service tax could at the option of the service provider be on the gross value (including materials) in which case the central excise duty credits on the packing materials would be available as a set off for the service tax. Alternatively as it is a works contract the value of materials sold in the course of providing the service would be deductible under Not.12/2003. In a works contract theoretically since the activity is not included in the coverage under “works contract” entry it can be argued that there is no liability at all. Where the packing materials are supplied by the customer the gross amount of labour charges paid would be liable. In all the options discussed above the Cenvat credit on the capital goods used for such packing and the input services credit would be available.

This aspect covers some of the areas of doubt in packing/ packaging category.